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WE shall esteem it a favor if some of our readers will advise us of the practice in Virginia, with respect to the right of a defendant who has not appeared or pleaded, to introduce evidence to reduce damages, or to cross-examine plaintiff's witnesses, upon the execution of a writ of inquiry.

In Tidd's Practice it is said that a defendant on the execution of a writ of inquiry has no right to give any evidence which would *defeat the action*, but only such as tends to *reduce the damages* (p. 523). See to the same effect: *Cook* v. *Skelton*, 20 Ill. 107, 71 Am. Dec. 250; *Foreman Shoe Co.* v. *Lewis* (Ill.), 60 N. E. 971; *Briggs* v. *Snegham*, 45 Ind. 22; *Willson* v. *Willson*, 25 N. H. 229, 57 Am. Dec. 320; *Garrard* v. *Dollar*, 4 Jones's Law (N. C.), 175, 67 Am. Dec. 271.

THE opinion of the Court of Appeals of Maryland in *Townsend* v. *Epstein*, 49 Atl. 629, contains an elaborate discussion of the right of abutting lot owners on public streets to enjoy an unobstructed easement of light and air from the street. The defendant, by permission of the city council, was engaged in erecting a structure above and across the street for the purpose of connecting stores owned by him on opposite sides of the street, so that customers and employees could pass from one to the other without descending to the street. The owner of the adjoining lot brought suit to enjoin the erection of the overhead passage-way, on the ground that it interfered with his easement of light and air.

The court held that in spite of the permission of the city council, the case was a proper one for an injunction. The easement of light and air from the street, to which every abutter is entitled, is a valuable property right, of which the abutter cannot be deprived to subserve a purpose purely private, even though compensation be provided for, as it was not in this case.

The recognition of the abutter's easement to light and air seems to

be of comparatively modern origin, but is now thoroughly established. See 2 Dillon Munic. Corp. (4th ed.), 712; *Barnett* v. *Johnson*, 15 N. J. 482; *Field* v. *Barling* (Ill.), 37 N. E. 850, 24 L. R. A. 406, 41 Am. St. Rep. 311; *Stewart* v. *Railway Co.* (W. Va.), 18 S. E. 604. It is largely on this ground that damages are allowed for steam railways, particularly elevated railways, in streets, the fee of which is not in the complaining abutter. See *Adams* v. *Chicago etc. Railway Co.* (Minn.), 39 N. W. 629, 12 Am. St. Rep. 644; *Theobold* v. *Louisville etc. R. Co.*, 66 Miss. 279, 14 Am. St. Rep. 564; *Lohr* v. *Metropolitan etc. R. Co.*, 104 N. Y. 268; *Abendroth* v. *Manhattan etc. R. Co.*, 122 N. Y. 1, 19 Am. St. Rep. 461, and note. The authorities are collected in a monographic note in 16 C. C. A. 486–489.

THE opinion in a recent Massachusetts case—*White* v. *Dahlquist*, 60 N. E. 791—points out with clearness the inaccuracy of the rule, as often stated, that an auctioneer is the agent of both parties in signing the memorandum of sale, but such signing must follow immediately upon the acceptance of the bid.

In this case, the auctioneer did not sign the memorandum until the day following the sale, and then omitted the name of the vendor—the signature being that of the auctioneer only. The suit was by the vendee for specific performance. On the question as to whether the signing by the auctioneer must be contemporaneous with the aeceptance of the bid, in order to bind the seller, the court points out that this is usually true where the auctioneer is a mere crier, not otherwise representing either party. But, as a rule, the auctioneer usually represents the seller, with authority to do whatever is necessary in consummating the sale, and, unless revoked, this authority continues as long as there is occasion for its exercise. But as to the *buyer*, who has given no special authority, the powers of the auctioneer, as the court indicates, are limited to making the memorandum contemporaneously with the sale.

This distinction between the auctioneer's authority in binding the seller and the buyer, is pointed out by Staples, J., in *Walker* v. *Herring*, 21 Gratt. 678, 682, in the following language: "I have found no case which holds that a memorandum drawn up and signed by the auctioneer long after the sale is completed and ended, is to be regarded as a writing within the meaning of the statute of frauds and perjuries, so as to bind a purchaser at such sale. With regard to the seller, the

rule may be different. The auctioneer is his agent, selected and remunerated by him, acting in his interest, and in a measure subservient to his wishes. The agency may be justly regarded as continuing until the close of the whole transaction. The purchaser, on the other hand, has nothing to do with the selection or the employment of the auctioneer. The agency created by him commences with the bidding and terminates when the sale is concluded.''

In the principal case, the court held that the fact that the auctioneer signed the memorandum in his own name only, without mentioning his principal, was immaterial, since the relation of principal and agent between the parties might be proved by parol, on familiar principles of the law of agency. *Gowen* v. *Klous*, 101 Mass. 449.